2001

Power-Train, Inc. and Jack H. Wynn v. Paul M. Stuver : Brief of Respondent

Utah Supreme Court

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IN THE SUPREME COURT

OF THE STATE OF UTAH

POWER-TRAIN, INC., and JACK H. WYNN,

Plaintiffs and Appellants,

vs.

PAUL M. STUVER,

Defendant and Respondent.

Case No. 14302

B R I E F O F R E S P O N D E N T

Appeal from Order of Third District Court
for Salt Lake County
Honorable Bryant H. Croft, District Judge

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IN THE SUPREME COURT

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B R I E F O F A P P E L L E E

STATEMENT OF THE NATURE OF THE CASE

This is an interlocutory appeal from an order granting Respondent's Motion to Dismiss the above entitled action.

DISPOSITION OF CASE BY LOWER COURT

An order granting the Appellee s Motion to Dismiss Appellant's complaint was entered on the 17th day of September, 1975.

RELIEF SOUGHT ON APPEAL

Appellee seeks to have the order of the trial court dismissing the above-entitled action affirmed.

STATEMENT OF FACTS

1. On October 20, 1973 Paul M. Stuver, of Eureka, California, entered into an "Assignment of Letters Patent" agreement with Jack H. Wynn, of Eureka, California, regarding Letters Patent No. 3,090,363 pertaining to a patented item known as "Mini-Sam"

2. Shortly thereafter, assignee Wynn entered into an Exclusive Patent License Agreement with Power-Train, Inc., a Nevada corporation, qualified to do business within the state of Utah, wherein Wynn, among other things, granted Power-Train, Inc. exclusive rights to manufacture, use sell, and market the "Mini-Sam" motor.

3. On February 20 1974, Paul M. Stuver entered into an "Assignment of Rights, Including Patent Rights" agreement wherein he conveyed an assignment of all his rights regarding a "hydraulic pump and braking system" to Jack H. Wynn.

4. On February 21, 1974, Mr. Wynn granted an exclusive Patent License to Power-Train, Inc. to manufacture use, market, and sell the hydraulic pump and braking system.

5. On November 1, 1974 Paul M. Stuver brought an action as plaintiff in the Superior Court of California, County of Humboldt, docket number 56571, against Jack H. Wynn and Power-Train Inc., and Does I through X inclusive, as defendants, for rescission of the two assignment agreements.

6. On December 10, 1974, an answer was filed on behalf of Jack H. Wynn and Power-Train, Inc. in the Superior Court of California, which denied the allegations of Mr. Stuver's complaint and set up as affirmative defenses, among other things misrepresentations by Stuver with respect to the legal integrity of the patents conveyed, and misrepresentations as to the performance and cost characteristics of the inventions. No Cross-Claim was

filed at tne time the original answer was filed.

7. On June 23 1975 Jack H. Wynn and Power-Train Inc. commenced an action against Paul M. Stuver in the District Court of the Third Judicial District in and for Salt Lake County, State of Utah, File No. 228733 (Exhibit A attached herewith). The alleged basis of the claims included, among other, misrepresentations as to the cost characteristics and performance of the inventions assigned, willful, wrongful and wanton sabotage by Stuver of the equipment, manufacturing devices and research data of power-Train, Inc.

8. Defendant Stuver moved to dismiss the Utah action on the grounds of the prior, pending action in California. The defendant urged that since the suit had originally been instituted in the California courts, and that appellants (defendants in the California action) had a speedy and appropriate remedy in that action, and since California s Compulsory Counterclaim statute would bar any subsequent suit on actions arising out of the same transaction occurrence, or series of transactions or occurrences judicial comity should be exercised and the Utah court should refrain from exercising jurisdiction over the matter. The Honorable Bryant H. Croft, on September 17, 1975 held that the court was of the opinion that the plaintiffs-appellants' fifteen causes of action were compulsory counterclaims within the meaning of the statute, and that the principles of comity required that the Utah case be dismissed.

9. On October 17, 1975, Plaintiffs-Appellants petitioned the Utah Supreme Court for an order permitting them to appeal the ruling of the lower court. The motion was granted November 17, 1975.

10. On November 12, 1975, Plaintiffs-Appellants petitioned the California court for an order allowing leave to file a Cross-Complaint in the California action. Counsel, in his Motion for Order Allowing the Filing of Cross-Complaint (Exhibit B, attached herewith), admitted that although the Cross-Complaint is difference in form from the action originally filed in Utah the cause of action are substantially the same as those contained in the Utah action. The Motion to Allow the Cross-Complaint was granted by the California Court on December 30, 1975, and on January 2, 1976, the California Cross-Complaint was filed (Exhibit C, attached herewith).

ARGUMENT

POINT I

UTAH AND CALIFORNIA COMPULSORY COUNTERCLAIM STATUTES WERE ENACTED WITH THE INTENTION OF MINIMIZING MULTIPLICITY OF ACTIONS AND APPELLANTS CAUSES OF ACTION SHOULD HAVE BEEN SUBMITTED AS COUNTERCLAIMS IN THE CALIFORNIA ACTION.

The law abhors a multiplicity of actions. In order to limit the number of actions between the same parties many rules of civil procedures have been enacted which consolidate related actions in a single suit. Some of these procedures are discretionary whereas others are mandatory. California Rules of Civil Procedure, Section 426.30, states:

> (a) Except as otherwise provided by statute, if a party against whom a complaint has been filed and served fails to allege in a cross-complaint any related cause of action which (at the time of serving his answer to the complaint) he has against the plaintiff, such party may not thereafter in any other action assert against the plaintiff the related cause of action. (Emphasis added.)

Section 426.10(c) clarifies what is meant by "any related cause of action." It says:

> 'Related cause of action" means a cause of action which arises out of the same transaction, occurrences, or series of transactions or occurrences as the cause of action which the plaintiff alleges in his complaint. (Emphasis added.)

The legislative purpose behind the enactment of the California Compulsory Counterclaim provision was to provide for the settlement, in a single action, of all the conflicting claims between the parties arising out of the same transaction, or series of transactions, and thus avoid a multiplicity of actions and a possibility of conflicting results. Bewley v. Riggs, 68 Cal. Rptr. 520, 262 Cal. App. 2d 188 (1968); Flickinger v. Swedlow Engineering Co., 45 C.2d 388, 289 P.2d 214 (1955); Sylvester v. Soulsburg, 60 Cal. Rptr. 218 252 Cal. App. 2d 185 (1967); Carey v. Cusack, 54 Cal. Rptr. 244, 245 Cal. App. 57 (1966).

The Utah legislature, recognizing the need for consolidation of all claims arising out of one transaction or series of transactions, enacted a similar statute. Rule 13(a) of the Utan Rules of Civil Procedure (1953 as amended) states:

> A pleading shall state as a counterclaim any claim which at the time of serving the pleading

> of the pleader has against any opposing party, if it arises out of the transaction or occurrence that is the subject matter of the opposing party's claim and does not require for its adjudication the presence of third parties of whom the court cannot acquire jurisdiction. (Emphasis added.)

The primary purpose behind Utah s Compulsory Counterlaim statute, as with all compulsory counterclaim statutes is the minimization of actions between the same parties arising out of the same series of transactions and the avoidance of the possibility of conflicting results. In Gillman v. Hansen, 26 Utah 2d 165 486 P.2d 1045 (1971) the defendant s attorney, appointed by an insurance carrier to represent the client regarding property damage to her car, discovered, after filing an answer to a complaint, that there should properly have been a counterclaim filed for personal injuries. Failure of the lower court to allow the counterclaim the Utah Supreme Court held was error since failure to assert the claim in such an action would bar the claim forever, pursuant to Rule 13 (a), Utah Rules of Civil Procedure, on the theory tnat all claims arising out of one transaction or series of transactions should be adjudicated in a single action. National Surety Corp. v. Christiansen Brothers, Inc., 29 Utah 2d 460, 511 P.2d 731 (1973) applied the same reasoning when they held that any claim the defendant had against the plaintiff for back construction charges necessarily would have arisen out of the same transaction (i.e., the building of the hospital) and therefore, snould have been regarded as compulsory counterclaims, pursuant to Rule 13(a) in that action. Failure to assert any of the related claims would bar recovery

on them in a subsequent action.

Utah and California courts have consistently recognized and applied other states rules, statutes, and case law when not inconsistent with their own laws or public policy. In Biewend v. Biewend, 17 C.2d 108, 109 P.2d 701 (1941), the California court stressed that there is a strong public policy favoring enforcement of duties validly. In Jackson v. Joyner, 12 Utah 2d 410, 367 P.2d 452 (1962) a case in which the defendant, president of an aluminum awning company, had failed to file and record the necessary documents with the Secretary of State of Wyoming to qualify his company to do business in that state as required by Wyoming law, the court said:

> Since appellant was the president of the Utah corporation and the person who actually transacted the business in Wyoming, there appears to be no good reason or public policy why our courts should not entertain an action against him based on the statutorily created liability in Wyoming. 367 P.2d 452, 454.

The court upheld the liability of the appellant based on the Wyoming statute imposing liability for such conduct. It is clear from the Jackson v. Joyner, supra, that courts do in fact recognize and apply sister state statutes. Also in accordance with this doctrine is Cahoon v. Pelton, 9 Utah 224, 342 P.2d 94 (1959).

Since Utah s Compulsory Counterclaim statute is similar to California s Compulsory Counterclaim statute, and imposes the

same requirement on the defendant to plead all related causes of action in a counterclaim or have such claims barred forever (Gillman v. Hansen, supra), Utah courts should recognize and apply those requirements in the case at bar (Jackson v. Joyner, supra). The causes of action alleged by appellants in the Utah case arose out of the same transaction, occurrence, or series of transactions or occurrences as those causes of action alleged in the California case. In Sylvester v. Soulsburg, 60 Cal. Rptr. 218 224, 252 Cal. App. 2d 185 (1967) the court defines "transaction" as "all of the phases of the relationship" which give rise to the suit. The relationship between Appellee and Appellants arose as a result of the planned development of the "Mini-Sam" motor and th "hydraulic pump and braking system." When Stuver began his suit in California, actions regarding all phases of that relationship should have been resolved there in a single action. Based on considerations of comity (See: Schaefer v. Milner, 156 Kan. 768, 137 P.2d 156 (1943); Simmons v. Superior Court, 96 Cal. App. 2d 1 214 P.2d 844 (1950); Greenhouse v. Hargrave, 509 P.2d 1360 (Okl. 1973) Judge Croft dismissed the action.

Appellants contend that since many of their causes of action sound in tort, whereas appellee s cause of action in the California action sounds in contract, the claims should not be considered as arising out of the same transaction or series of transactions. This position is clearly untenable. In Sylvester v. Soulsburg, 60 Cal. Rptr. 218 252 Cal. App. 2d 185

(1967), the court discussed the issue of counterclaims based on different causes of action than those asserted in the complaint. The court said:

> "It is contended by the appellants that the potential counterclaim which could have been urged by the present appellants in the first case would not have been sufficient under Section 439 (repealed. Now 426.10) of the Code of Civil Procedure, because the complaint in the first case was based on contract, and the counterclaim if any, would have been based on tort, and, also in somewhat similar vein, that the plaintiffs in the first case were acting in the capacity of a person claiming under contract, and the potential counter-claimants would have been acting in the capacity of person injured by tort. This attempted distinction is not sound. As is said in 2 Witkin California Procedure Pleading, Section 580, at page 1591:
>
> > "The complaint may be in contract and the counterclaim in tort, or vise versa..."
> > 60 Cal. Rptr. 218 223

Failure to assert a counterclaim because based on different causes of action, therefore, bars the institution of future suits on the same action. In Brunswig Drug Co. v. Springer, 55 Cal. App. 2d 444, 130 P.2d 758 (1942), the California court also discussed the joining of separate causes of action in a single action and held that where a buyer sued for rescission of a conditional sales agreement on the ground of fraud and asked for damages if rescission was denied, it was incumbent on the sellers under section 439. (now section 426.10) to recover for any claims against the buyer. Not having presented all possible claims in the first action, the judgment for the buyer barred a subsequent action by the

sellers for moneys due under the conditional sales contract. This principle applies to the facts in the present case. The appellants, in their California action, according to Brunswig Drug Co. v. Springer, supra, must present all claims related to the transaction between themselves and respondents in the present California case or barred from subsequent actions. On the other hand, recognizing sister state law as per Jackson v. Joyner, supra, Utah is bound to apply California law and bar appellants from filing a second action over the same transactions or series of transactions. Utah also recognizes this in Gillman supra, where importance of litigating all related issues in a singl action.

Appellants argue that not all of the causes of action contained in their complaint in the present action arose out of the same transaction occurrence, or series of transactions or occurrences as appellee s California claim. They contend that a claim can only be considered compulsory if it raises common questions of law that would justify requiring all of the defendant claims to be adjudicated in the proceeding brought by the plaintiff. As early as King v. Coe Commission Co., 93 Minn. 52, 100 N. 667 (1904) courts have dealt with tne interpretation of the term "transaction." The court states:

> The term "transaction", as used in the statute, is obviously broader than the term "contract" and authorized matters to be set up as counter-claims which could not be so pleaded as arising upon tne contract relied upon by

> plaintiff. The cause of action arises from the transaction set forth in the complaint when the combination of acts and events, circumstances and defaults, upon which the rights of the parties are based, when viewed in one aspect, result in the plaintiff's right of action and when viewed in another aspect, result favorably to defendant. 100 N.W. 667, 668.

The interpretation of the term "transaction" therefore does not need to be applied merely to matters arising from the contract in question, but from all matters arising from the circumstances, acts, and events which give rise to the plaintiff's cause of action. In Sylvester v. Soulsburg, 60 Cal. Rptr. 218, 252 Cal. App. 2d 185 (1967) the court discussed the meaning of "transaction" further and concluded:

> "The word transaction embraces almost any activity by a person which affects another's right and out of which a cause of action may arise. 60 Cal. Rptr. 218, 223."

The court went on to apply the definition to compulsory counter-claims and held:

> The whole case turns on the meaning of "transaction" as used in the code section. We think that, where there is an action on a contract for the sale of land and the personal property used on it with the purchaser in possession, and there exists a claim by the purchaser that he has been wronged by the seller in not complying with the terms of the contract, the whole controversy and all its parts relate collectively to a single "transaction", and that public policy enunciated in Section 439 of the Code of Civil Procedure (now 426.10) require that all of the phases of the relationship should be resolved in a single litigation or be forever barred.
>
> 60 Cal. Rptr. 218, 224

In the case at bar, the circumstances which gave rise to the

plaintiff's cause of action in the California courts as mentioned above arose from the arrangement between appellants and appellee for the development of the "Mini-Sam" motor and the "hydraulic pump and braking system." (The contract in question in the California case, the working relationship between appellants and appellee, and the alleged torts by the appellee which is the basis of the action in Utah, arose from the planned development of the products or was all part of that transaction.) This line of reasoning was followed in Scott v. Waggoner, 48 Mont. 536, 139 P. 454 (1914). In that case, the action was based upon a lease of a hotel. The plaintiff asked for rent and damages for waste. A counterclaim was set up for wrongful eviction and conversion of personal property. In holding that the counterclai was properly pleaded, the court said:

> That these provisions are designed to enable parties litigant to adjust their differences in one action so far as that can logically be done, and thereby to prevent multiplicity of suits, is made plain by the further provision that, if the defendant omit to set up a counterclaim in the classes mentioned in subdivision 1 of section 6541, neither he nor his assignee can afterwards maintain an action against the plaintiff thereon. Section 6547. For statutes so highly remedial, a broad and liberal construction is required, in order that the purposes designed by them shall be most completely served. 139 P.2d 454, 455

Also in accordance with the above cases requiring a broad interpretation of compulsory counterclaim statutes is

Warren v. DeLong, 97 P.2d 792 (1940). In 3 Moore, Federal Practice Paragraph 13.13 at 33 (2d ed. 1953), cited with approval in MacDonald v. Krause, 362 P.2d 724 (Nev. 1961) and applied in that case, the rule is interpreted to mean that:

> Subject to the exceptions, any claim that is logically related to another claim that is being sued on is properly the basis for a compulsory counterclaim; only claims that are unrelated or are related, but within the exceptions, need not be pleaded.

Judge Croft's determination that the claims in question did arise out of the same series of transactions as the action pleaded in the California action is supported by case law and the natural inferences that such claims were logically related.

Appellants also apparently recognized the relationship between the actions alleged by appellee and the causes of action alleged in Utah. When Judge Croft ruled against entertaining the suit, the appellants immediately instituted a Motion to allow them to file the claims in the California action (Exhibit B). The motion was granted (Exhibit C) and all of the issues are now pending in the California action.

In the case at bar, appellants are seeking to file an additional suit on the same transaction which neither Utah nor California would allow. California's statute requiring adjudication of all related causes of actions in a single suit is similar to Utah's and, therefore, is consistent with Utah law and sound

public policy. Since appellants have, and have taken advantage of, access to the California courts for the remedies sought and since such claims would be mandatory under california law the Utah court properly refused to let the appellants circumvent the statute by instituting the action in Utah. The court properly dismissed the Utah action.

POINT II

JUDICIAL COMITY WAS PROPERLY EXERCISED IN THE REFUSAL OF THE COURT TO ENTERTAIN JURISDICTION OVER THE CASE AT BAR.

Within limits, a plaintiff has the right to pick an appropriate tribunal, having jurisdiction, for prosecution of his rights. The plaintiff s right in the California action to having the matter adjudicated in the forum of his choosing should not be defeated by actions of the defendant contrary to statutory requirements. The defendant (in the California action, appellant here) deliberately refused to comply with the pleading requirements and sought to circumvent those requirements by instituting the action in Utah. As a general rule, however, a court of competent jurisdiction which acquires jurisdiction over the subject matter, retains such jurisdiction until the matter is finally disposed of. The court in Schaefer v. Milner, 156 Kan. 768, 137 P.2d 156 (1943) in discussing this general rule said:

> The general rule is well established that when a court of competent jurisdiction acquires jurisdiction of the subject matter its authority continues until the matter is finally disposed of, and that no court of co-ordinate authority should interfere with its action. 14 AmJur., 435; 15

> C.J. 1134, 1136; 21 C.J.S. Courts, § 492, pp.745-748. As said in 15 C.J. 1135, 21 C.J.S., Courts, § 492: "This rule rests on comity and the necessity of avoiding conflict in the execution of judgments by independent courts, and is a necessary one because any other rule would unavoidably lead to perpetual collision and be productive of most calamitous results." As stated in Am.Jur. supra.: "The principle is essential to the proper and orderly administration of the laws; and while its observance might be required on the grounds of judicial comity and courtesy, it does not rest upon such considerations exclusively, but is enforced to prevent unseemly, expensive and dangerous conflicts of jurisdiction and of process. 137 P.2d 156, 160.

Although a court acquiring jurisdiction over a matter should prosecute that matter to finality, several situations may arise which terminate the action prior to the ruling on the merits. Appellants rely heavily on the principle of "Abatement". Reliance on this principle is misplaced and not in point when applied to the present case. In order for a cause of action to be pleaded in abatement of another, as appellants mention in their brief, the general rule is that the parties must be identical, in the same position as plaintiff and defendant, identity of issues and generally within the same jurisdiction. In such a case Abatement exists as a matter of right for defendant in order to avoid vexatious litigation. In the case at bar, however, the principle of comity, not abatement, applies. Application of the principle of comity as contrasted to "Abatement" is shown in Simmons v. Superior Court, 96 Cal. App. 2d 119, 214 P.2d 844 (1950), a case in which the petitioner, in a Texas action, sought a divorce,

a restraining order enjoining the husband from withdrawing funds from certain corporations, an accounting, the appointment of a receiver, and general relief. The defendant, her husband, filed a suit in California seeking some similar relief but also seeking relief not sought in the Texas action. The petitioner sought a stay of the California proceedings. In discussing the difference between a "Plea in Abatement" and a comity, the court said:

> Petitioner did not seek an "Abatement" of the California action. She merely sought a "Stay of the proceedings." While an abatement and a stay of the proceedings are in some respects similar, they are not identical. To abate a suit is to put an end to its existence. Abatement is ordinarily a matter of right. The general rule is that the "pendency of a prior suit in one state cannot be pleaded in abatement or in bar to a subsequent suit in another state even though both suits are between the same parties and upon the same cause of action." (Citation.) However, the court in which the second action is brought may in its discretion stay or suspend that suit, awaiting decision in the first one, or influenced by a spirit of comity, may refuse to entertain it, if the same relief can be awarded in the prior suit.
> 214 P.2d 844, 848 (Emphasis added.)

Abatement, therefore, is a matter of right whereas comity is discretionary with the court. In the case at bar, the trial court judge, in the Minute Entry #228733, ruled that:

> The court is of the opinion that said fifteen causes of action are compulsory counterclaims that should be filed in the California case and that the principles of comity require dismissal of the case now before this court.
> (Emphasis added)

The issue, then, is not whether the appellee had a right to the abatement of the issue, but whether the trial judge had the discretion, based on principles of comity, to refuse to entertain jurisdiction. Based upon the Simmons case supra. the judge clear had tne discretion.

Appellants argue, however, that the refusal of a court to entertain jurisdiction in such a case is a minority opinion. That assertion is not supported by case law. In an Oklahoma case, Greenhouse v. Hargrave, 509 P.2d 1360 (Okl. 1973) the concept of comity was further discussed. In this case, the petitioner sought to enjoin furtner proceedings in Seminole County because identical proceedings had previously been filed in Washington Federal Court. The court stated:

> Under the facts and circumstances in the case at bar, the determining factor is not whether the District Court of Seminole County has jurisdiction as a matter of law, but whether or not the District Court of Seminole County should assume or exercise jurisdiction as a matter of judicial comity.
>
> The doctrine of comity between courts stands for the premise that one court should defer action on causes properly within its jurisdiction until courts of another sovereignty with concurrent powers and already cognizant of the litigation have had an opportunity to pass upon the matter. Under the doctrine of comity, a court should ordinarily decline to entertain jurisdiction of a matter where there is an action pending in a convenient and competent forum of a sister state to which the parties may apply, and where exercise of jurisdiction by the second court might lead to confusion and conflicting orders. 509 P.2d 1360, 1363. (Emphasis added)

The interpretation of judicial comity in the Greenhouse case,

supra., is followed in Perrenoud v. Perrenoud, 206 Kan. 559, 480 P.2d 749 (1971) in which the court said:

> The general rule is that courts should exercise comity between themselves in order to avoid expense and harrassment and invonvience to the litigants. This general rules is applicable not only between courts of coordinate jurisdiction within the same state, but between federal courts and state courts, and between state courts of different states. 480 P.2d 749, 760. (Emphasis added)

See also Dodge v. Superior Court, 139 Cal. App. 178, 33 P.2d 695, 34 P.2d 501 (1934). The case at bar seems to fit squarely within the meaning, intent, and application of the judicial comity principle. The case was initially instituted in the California courts by appellee. The issues are almost identical as per the pleadings and statements of California counsel. See Exhibit C. The appellant intentionally sought to disregard the Compulsory Counterclaim statute, which remedy was available to litigate any of the related causes of action, and sought to bring the action in Utah. Under the principles of comity as cited herein, the appellants' action in Utah should be dismissed.

Thus, the ultimate question in the case at bar is whether the trial court abused its discretion in granting appellee Motion to Dismiss. The general rule in matters concerning the use of discretionary powers by a trial judge is that such discretionary judgment of the judge will be upheld unless it appears that the discretion was used arbitrarily, capriciously or without reasonable support in fact. Upton v. Heiselt Construction Co 3 Utah 2d 170, 280 P.2d 971 (1973). The court in Hays v. Superio Court, 16 Cal.2d 260, 265, 105 P.2d 975 (1940) said that the

an abuse. In the Simmons

case supra. the court held that it was an abuse of discretion not to stay the proceeding. The court said:

> We think it manifest that respondent court abused its discretion in not staying, as a matter of comity, further proceedings in the California action until the final determination of the Texas action. 214 P.2d 844, 849.

In an Oklahoma case, Moody v. Branson, 192 Okl. 327, 136 P.2d 925 (1943) the court said that under the doctrine of comity, a court should ordinarily decline to entertain jurisdiction of a matter when there is an action already pending in a convenient and competent forum of another state to which the parties may apply and where exercise of jurisdiction by the second court might lead to confusing and conflicting orders. The majority view, contrary to the assertions by appellants, is tnat the doctrine of comity should be followed unless an overriding policy consideration exists. Comity may be exercised by either staying the proceedings or refusing to entertain jurisdiction at all. Judge Croft, in his discretion, choose not to entertain jurisdiction at all. There are no overriding policy consideration to alter his decision. Appellants had an opportunity to, were statutorily required to and finally did take advantage of the compulsory counterclaim provision to seek relief for alleged causes of action arising from the same transactions or occurrences as appellee's cause of action in California. Clearly, the trial court did not abuse its discretion by refusing to exercise jurisdiction over the matter.

CONCLUSION

The trial court in California having first acquired jurisdiction over the matters involved in the case, is the proper forum for adjudication of all matters arising from the transactions involved. Appellants' causes of action, although sounding in tort, logically are related to and arise from the transaction or occurrence which is the cause of action relied on by appellee in the California case. Being related such causes of action should have been filed there, which action was subsequently taken. The Utah trial judge, after reviewing the appellants' causes of action, properly refused to entertain jurisdiction of the matter based on considerations of comity. His discretionary ruling was well within the bounds of the exercise of such authority and was based on supportive decisions from other jurisdictions. The Utah Supreme Court should affirm the lower court's determination and refuse to exercise jurisdiction over the matter.

Respectfully submitted,

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Exhibit A

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IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

POWER-TRAIN, INC., and JACK H. WYNN, Plaintiffs, vs. PAUL M. STUVER, Defendant.	C O M P L A I N T Civil No._____

The Plaintiffs make the following Complaint against the Defendant:

FIRST COUNT
JURISDICTION

1. The Plaintiff is a Nevada corporation, qualified to do business within the State of Utah.

2. The Plaintiff, Jack H. Wynn, is an individual residing in Eureka, California.

3. The Defendant is a resident of the State of California.

4. That the Agreements attached hereto and incorporated herein by reference as Exhibits "A", "B", "C" and "D", provide that the laws of the State of Utah shall govern.

5. That the Agreements attached hereto as Exhibits "A", "B", "C" and "D" were negotiated with the Defendant with the State of Utah.

6. That the Defendant has had many business contacts involved in these allegations within the State of Utah.

7. Venue is proper in this District Court for the Third Judicial District of Salt Lake County, State of Utah in that the acts and transactions alleged by the Plaintiffs were carried

out and made effective in Salt Lake County, State of Utah, the principal place of business of the Plaintiffs.

FACTS

8. On October 20, 1973, Paul M. Stuver entered into an "Assignment of Letters Patent", a copy of which is attached hereto and incorporated herein by reference as Exhibit "A", wherein the Defendant represented that he was the sole and exclusive owner of Letters Patent No. 3,090,363 in the United States Patent Office pertaining to an allegedly efficient "Mini-Sam" motor (also known as the "Power-Train"). The assignee was Jack H. Wynn of Eureka, California. Shortly thereafter, Jack H. Wynn entered into an Exclusive Patent License Agreement with Power-Train, Inc. wherein Jack H. Wynn, as Licensor of said "Mini-Sam" Letters Patent granted to Power-Train, Inc., among other things, exclusive rights to manufacture, sell and market said invention. A copy of the said Exclusive Patent License Agreement between Jack H. Wynn and Power-Train, Inc. is attached hereto and incorporated by reference herein as Exhibit "C".

9. On the 20th day of February, 1974, the Defendant entered into an "Assignment of Rights, Including Patent Rights" conveying an assignment of all of his rights, including, but not limited to, the patent rights, to a "...high volume, moderate pressure, radial piston, hydraulic pump and braking system..." ("pump") to Jack H. Wynn. A copy of this Agreement is attached hereto and incorporated herein by reference as Exhibit "B".

10. On the 21st day of February, 1974, Jack H. Wynn granted an Exclusive Patent License to Power-Train, Inc. to, among other things, manufacture, use, sell, market, etc., the high volume, moderate pressure, radial piston, hydraulic pump and braking system. A copy of that Exclusive Patent License Agreement is attached hereto and incorporated herein by reference herein as Exhibit "D".

11. Although a great deal of consideration has already been paid and/or transferred to Paul M. Stuver by Jack H. Wynn

and Power-Train, Inc., in total reliance upon the many representations by Paul M. Stuver concerning the viability of these products, the many representations, misrepresentations and warranties made by Stuver have not proven to be true, but, on the contrary, have proven to be untrue.

12. That during the negotiations, both before and after the execution of the various Agreements attached hereto as Exhibits, the Defendant, falsely and fraudulently, and with an intent to induce Jack H. Wynn and Power-Train, Inc. (the Defendant knew that Jack H. Wynn was the President of Power-Train, Inc., and that Power-Train, Inc. would receive the ultimate assignments), to enter into the Agreements attached hereto as Exhibits A through D, and orally represented and warranted to Wynn and Power-Train, Inc. as follows:

(a) That the Mini-Sam patents were good, viable, legally unassailable, solid and that they would stand up under close scrutiny;

(b) That the Mini-Sam motor was a perfected device which was capable of immediate manufacture and dissemination;

(c) That the Mini-Sam motor was professionally and properly designed with the best engineering talents available;

(d) That the Defendant, Stuver, was the sole inventor of both the Mini-Sam motor and the pump devices and had all right, title and interest in and to any patent rights thereto;

(e) That the Defendant, Stuver, had applied said Mini-Sam motor to various automotive devices which worked and functioned perfectly;

(f) That said Mini-Sam motor was capable of driving an ordinary automotive vehicle and brake the speed in excess of eighty (80) miles per hour;

(g) That all of those who assisted him were paid in full and that the appropriate releases were obtained;

(h) That the Mini-Sam would become an instantaneous success to Power-Train, Inc.;

(i) That it would not take more than Fifty Thousand Dollars ($50,000) to begin the manufacture of the Mini-Sam to the point where Power-Train would have a perfected, fully working prototype vehicle which would be fully operable on either a truck or automobile;

(j) That it would not take more than Fifty Thousand Dollars ($50,000) to begin the effective manufacture of the pump;

(k) That he owned all of the necessary equipment, molds, patterns and other basic items of manufacturing necessary to the manufacturing of the said Mini-Sam;

(l) That he had not conveyed any of his right, title and interest in and to the Mini-Sam and/or the pump to others;

(m) That he would lend his best efforts in cooperating with the Plaintiffs in the setting up of the manufacture, and marketing of the allegedly "perfected devices"; and

(n) That he would not cause disturbances or interfere with any of the employees or business contacts of the Plaintiffs; and

(o) That he would otherwise lend his best efforts to see the Power-Train projects through successfully.

13. That the aforesaid representations were false and were there known by the Defendant to be false.

14. That the Plaintiffs believed and relied upon the aforesaid representations and thereby were induced to enter into the Agreements with the Defendant and make payments pursuant thereto.

15. That by reason of the Defendant's misrepresentations as aforesaid and as a direct and proximate result therefrom, the

Plaintiffs have suffered damage to their name, business, business reputation and have suffered serious and severe damages.

16. That the Defendant has acted and continues to act in a willful, wrongful, fraudulent and deceitful manner so as to damage the Plaintiffs in an amount in excess of Two Hundred Fifty Thousand Dollars ($250,000).

17. In addition, the Plaintiffs seek punitive damages in an amount of One Hundred Thousand Dollars ($100,000), together with costs and other expenses including attorney's fees.

COUNT TWO

18. Paragraphs 1 through 17 of Plaintiffs' Complaint are hereby incorporated by reference.

19. Upon information and belief, the Plaintiffs do hereby assert that the Defendant is not the inventor of the Mini-Sam motor and of the pump. In fact, the Defendant has used other persons' ideas and claimed them as his own, when in fact he knew or had reason to know they were not his own.

20. As a result of the misrepresentations as alleged in this Count, the Plaintiffs have been damaged in the amount of One Hundred Thousand Dollars ($100,000).

21. In addition, the Plaintiffs seek punitive damages as a result of the willful, wrongful and intentional misconduct of the Defendant, in an amount of Fifty Thousand Dollars ($50,000), together with costs and other expenses including attorney's fees.

COUNT THREE

22. Paragraphs 1 through 21 of Plaintiffs' Complaint are hereby incorporated by reference.

23. Although the Defendant has represented that the Mini-Sam motor and the pump were perfected devices and that they were readily available to and were capable of being instantly manufactured, the contrary is true. Such devices were not ready for manufacture; could not be manufactured easily; were not perfected; were improperly engineered; did not take care of the

necessary difficulties; could not be readily adopted to automotive or other machinery devices; were overly expensive to make; and then did not function as Stuver, the Defendant, has represented.

24. As a result of the misrepresentations as alleged in this Count, the Plaintiffs have been damaged in the amount of Two Hundred Fifty Thousand Dollars ($250,000).

25. In addition, the Plaintiffs seek punitive damages as a result of the willful, wrongful and intentional misconduct of the Defendant, in an amount of One Hundred Thousand Dollars ($100,000).

COUNT FOUR

26. Paragraphs 1 through 25 of Plaintiffs' Complaint are hereby incorporated by reference.

27. The Defendant, in entering into the Agreements, continually made representations that he would give full and complete cooperation in working together to accomplish the exploitation of the Mini-Sam motor and the pump.

28. In fact, Stuver agreed to become employed by Power-Train, Inc. and represented himself to have great scientific and mechanical knowledge concerning the Mini-Sam, which is commonly called the "Power-Train".

29. In entering into such agreements, Stuver misrepresented that he had all of the technical know-how necessary to begin the manufacture of the Mini-Sam, Power-Train motor and pump. In fact, Stuver did not have such expertise, engineering or manufacturing know-how.

30. As a result of their reliance upon Stuver's misrepresentations and to his know-how, the Plaintiffs have expended exorbitant amounts of money all to their loss and expense. The developments the Plaintiffs have accomplished were accomplished without any help from the Defendant and without reliance upon any expertise or inventions of the Defendant

31. As a result of the over-expenditure of funds in reliance upon the misrepresentations of Stuver, which Stuver knew to be false at the time that he made them, Power-Train, Inc. and Jack H. Wynn have been damaged in an amount in excess of Two Hundred Fifty Thousand Dollars ($250,000).

32. In addition, the Plaintiffs seek punitive damages as a result of the willful, wrongful and intentional misconduct of the Defendant, in an amount of One Hundred Thousand Dollars ($100,000).

COUNT FIVE

33. Paragraphs 1 through 32 of Plaintiffs' Complaint are hereby incorporated by reference.

34. The Defendant continued to represent, throughout all of the negotiations, subsequent employment and subsequent losses of Power-Train, that the Mini-Sam and pump devices were economically viable and perfected products and were immediately capable of manufacturing into a single truck or automobile vehicle and then, after the worth of the single vehicle was demonstrated, the full manufacturing would be easily and inexpensively instituted.

35. In fact, the inventions as they existed and as the Defendant misrepresented them, were not economically viable or perfected products.

36. The Plaintiffs have spent extraordinary amounts of monies trying to make said products viable, when in fact they, as they existed at the time of the original misrepresentations, were not perfected or economially viable.

37. As a result of the over-expenditure of funds in reliance upon the misrepresentations of Stuver, which Stuver knew to be false at the time that he made them, Power-Train, Inc. has been damaged in an amount in excess of Two Hundred Fifty Thousand Dollars ($250,000).

38. In addition, the Plaintiffs seek punitive damages as a result of the willful, wrongful and intentional misconduct

of the Defendant, in an amount of One Hundred Thousand Dollars ($100,000).

COUNT SIX

39. Paragraphs 1 through 38 of Plaintiffs' Complaint are hereby incorporated by reference.

40. During the time that the Defendant contracted with the Plaintiffs, the Defendant deliberately, willfully, and wantonly sabotaged much of the equipment, manufacturing devices, devices and research data of the Plaintiffs.

41. Such deliberate sabotage and destruction of equipment, manufacturing devices and devices has cost the Plaintiffs damages in excess of One Hundred Thousand Dollars ($100,000) and unknown additional damages, which will be offered at the time of trial, as a result the delays caused to the overall programs of the Plaintiffs.

42. In addition, the Plaintiffs seek punitive damages, as a result of the willful, deliberate and wanton conduct of the Defendant in the amount of Fifty Thousand Dollars ($50,000) together with costs and other expenses including attorney's fees.

COUNT SEVEN

43. Paragraphs 1 through 42 of Plaintiffs' Complaint are hereby incorporated by reference.

44. Inspite of all the representations and misrepresentations made by the Defendant, that the Defendant had all the right, title and interest in and to the various inventions and that the Defendant would not interfere in any manner with the Plaintiffs' rights to said inventions, the Defendant entered into other contracts affecting said inventions and patents, in violation of his Agreements with the Plaintiffs.

45. As a result of the Defendant's willful and wrongful actions in entering into other contracts affecting the patents and alleged inventions of the Defendant, the Plaintiffs have been damaged in an amount in excess of One Hundred Thousand Dollars ($100,000).

46. In addition, the Plaintiffs seek punitive damages, as a result of the willful, deliberate and wanton conduct of the Defendant in the amount of Fifty Thousand Dollars ($50,000) together with costs and other expenses including attorney's fees.

COUNT EIGHT

47. Paragraphs 1 through 46 of Plaintiffs' Complaint are hereby incorporated by reference.

48. The Defendant has intentionally, willfully and wrongfully interfered with the business contacts, contracts and advantages of the Plaintiffs by intentionally dealing with others on said alleged patents and inventions without consulting with the Plaintiffs and at such times and places as to cause the Plaintiffs serious and severe damages.

49. As a result of the over-expenditure of funds in reliance upon the misrepresentations of Stuver, which Stuver knew to be false at the time that he made them, Power-Train, Inc. and Jack H. Wynn have been damaged in an amount in excess of Two Hundred Fifty Thousand Dollars ($250,000).

50. In addition, the Plaintiffs seek punitive damages, as a result of the willful, deliberate and wanton conduct of the Defendant in the amount of One Hundred Thousand Dollars ($100,000) together with costs and other expenses including attorney's fees.

COUNT NINE

51. Paragraphs 1 through 50 of Plaintiffs' Complaint are hereby incorporated by reference.

52. As a result of the misrepresentations of the Defendant, upon which the Plaintiffs relied, the Plaintiffs have made certain payments to the Defendant who has taken such payments under false pretenses, when in fact, the Defendant knew he did not have perfected inventions which were economically viable.

53. As a result of the misrepresentations of the Defendant, Power-Train, Inc. has been damaged in an amount in excess of One Hundred Thousand Dollars ($100,000).

54. In addition, the Plaintiffs seek punitive damages, as a result of the willful, deliberate and wanton conduct of the Defendant in the amount of Fifty Thousand Dollars ($50,000) together with costs and other expenses including attorney's fees.

COUNT TEN

55. Paragraphs 1 through 54 of Plaintiffs' Complaint are hereby incorporated by reference.

56. During all of the time in which the Defendant was acting pursuant to the contract with the Plaintiffs, the Defendant continually, intentionally, willfully and wrongfully interferred with the actions of and the work of the various employees of the Plaintiffs.

57. As a result of the Defendant's wrongful and intentional interference with the work to be performed by the various employees of the Plaintiffs, the Plaintiffs have been damaged in an amount in excess of One Hundred Thousand Dollars ($100,000) for which recovery is herein sought.

58. In addition, the Plaintiffs seek punitive damages, as a result of the willful, deliberate and wanton conduct of the Defendant in the amount of Fifty Thousand Dollars ($50,000) together with costs and other expenses including attorney's fees.

COUNT ELEVEN

59. Paragraphs 1 through 58 of Plaintiffs' Complaint are hereby incorporated by reference.

60. The Defendant misrepresented that he had certain ownership of patterns, molds and other necessary equipment or materials. These patterns, molds and other necessary equipment and materials were necessary in the manufacturing of the Mini-Sam and pump.

61. In fact, the Defendant did not have ownership of said patterns, molds and other materials as represented.

62. As a result of the Defendant's willful and wrongful misrepresentations, upon which the Plaintiffs relied to their detriment, the Plaintiffs have been damaged in an amount in excess of Twenty-five Thousand Dollars ($25,000).

63. In addition, the Plaintiffs seek punitive damages, as a result of the willful, deliberate and wanton conduct of the Defendant in the amount of Twelve Thousand Five Hundred Dollars ($12,500).

COUNT TWELVE

64. Paragraphs 1 through 63 of Plaintiffs' Complaint are hereby incorporated by reference.

65. The Defendant willfully and wrongfully represented that he was the sole owner of the patents and rights to the inventions involved in the Exhibits attached hereto.

66. The Defendant fully knew that he was not the sole owner of such rights, but had conveyed certain interests to others.

67. As a result of the willful and wrongful misrepresentations of the Defendant, upon which the Plaintiffs have relied to their detriment, the Plaintiffs have been forced to resolve certain claims by third parties at serious costs and expense to the Plaintiffs in excess of Twenty-Five Thousand Dollars ($25,000).

68. That by reason of the actions of the Defendant with regard to the foregoing, the Plaintiff has been damaged in an amount in excess of Twenty-five Thousand Dollars ($25,000).

69. In addition, the Plaintiffs seek punitive damages, as a result of the willful, deliberate and wanton conduct of the Defendant in the amount of Twelve Thousand Five Hundred Dollars ($12,500).

COUNT THIRTEEN

70. Paragraphs 1 through 69 of Plaintiffs' Complaint are hereby incorporated by reference.

71. The Defendant willfully and wrongfully made misrepresentations to the Plaintiffs, upon which the Plaintiffs relied to their detriment, that the Mini-Sam motor would drive a normal

Detroit built automobile in excess of Eighty (80) miles per hour and that said motor was perfected, when in fact said motor was not perfected and at its best would not drive a vehicle in accordance with any of the misrepresentations made by the Defendant to the Plaintiffs.

72. As a result of these misrepresentations, upon which the Plaintiffs relied, the Plaintiffs incurred serious expenses and have suffered damages in excess of Two Hundred Fifty Thousand Dollars ($250,000) and had been considerably delayed in the effectuation of their various programs.

73. That by reason of the actions of the Defendant with regard to the foregoing, upon which the Plaintiffs have relied to their detriment, the Plaintiffs have been damaged in an amount in excess of Two Hundred Fifty Thousand Dollars ($250,000).

74. In addition, the Plaintiffs seek punitive damages, as a result of the willful, deliberate and wanton conduct of the Defendant in the amount of One Hundred Thousand Dollars ($100,000).

COUNT FOURTEEN

75. Paragraphs 1 through 74 of Plaintiffs' Complaint are hereby incorporated by reference.

76. Upon information and belief, the Plaintiffs do hereby aver that the Defendant has been financially supported by other third party investors who formerly were the contacts of the Plaintiffs and that said investors are supporting the Defendant in some or all of the willful and wrongful actions listed hereinbefore including, but not limited to, the actions of champerty and maintenance, in fostering Stuver's unjust lawsuit in California.

77. In accepting the financial backing by persons who were formerly dealing with Power-Train, Inc., the Defendant has intentionally, willfully and wrongfully interferred with the relationships for which the Plaintiffs spent a great deal of money and time.

78. As a result of the tortious interference of the Defendant, the Plaintiffs have been damaged in an amount in excess of One Hundred Thousand Dollars ($100,000).

79. In addition, the Plaintiffs seek punitive damages, as a result of the willful, deliberate and wanton conduct of the Defendant in the amount of Fifty Thousand Dollars ($50,000).

COUNT FIFTEEN

80. Paragraphs 1 through 79 of Plaintiffs' Complaint are hereby incorporated by reference.

81. Plaintiffs, at great expense, and without the aid of the Defendant, have developed various automotive products and inventions which are secret in nature.

82. The Defendant has evidenced various desires to interrupt and destroy the creative, inventive and viable activities of the Plaintiffs under the guise, among other things, that he was the inventor of the Power-Train devices.

83. By reason of the facts alleged herein, the Defendant should be required to account to the Plaintiffs for any and all profits or arrangements made by him, directly or indirectly, as a result of his willful, wanton, wrongful, illegal and fraudulent conduct.

84. By reason of the losses suffered by Plaintiffs, the Plaintiffs herein request equitable relief from any further obligation or obligations to the Defendant.

85. Plaintiffs have no adequate remedy at law.

86. An injunction should be ordered preventing the Defendant and his agents, employees and/or business associates from committing any further wrongful acts.

87. Plaintiffs hereby request that they have such other and further relief as may be just and proper, with costs and disbursements of this action, including the fair and reasonable allowance for counsel fees and other lawful expenses in connection with the prosecution of this action.

WHEREFORE, these Plaintiffs demand that judgment be entered in their favor for the following:

1. As to Count One Two Hundred Fifty Thousand Dollars ($250,000) general compensatory damages and One Hundred Thousand Dollars ($100,000) in punitive damages;

2. As to Count Two, One Hundred Thousand Dollars ($100,000) general compensatory damages and Fifty Thousand Dollars ($50,000) in punitive damages;

3. As to Count Three, Two Hundred Fifty Thousand Dollars ($250,000) general compensatory damages and One Hundred Thousand Dollars ($100,000) punitive damages;

4. As to Count Four, Two Hundred Fifty Thousand Dollars ($250,000) general compensatory damages and One Hundred Thousand Dollars ($100,000) punitive damages;

5. As to Count Five, Two Hundred Fifty Thousand Dollars ($250,000) general compensatory damages and One Hundred Thousand Dollars ($100,000) punitive damages;

6. As to Count Six, One Hundred Thousand Dollars ($100,000) general compensatory damages and Fifty Thousand Dollars ($50,000) punitive damages;

7. As to Count Seven, One Hundred Thousand Dollars ($100,000) general compensatory damages and Fifty Thousand Dollars ($50,000) punitive damages;

8. As to Count Eight, Two Hundred Fifty Thousand Dollars ($250,000) general compensatory damages and One Hundred Thousand Dollars ($100,000) punitive damages;

9. As to Count Nine, One Hundred Thousand Dollars ($100,000) general compensatory damages and Fifty Thousand Dollars ($50,000) punitive damages;

10. As to Count Ten, One Hundred Thousand Dollars ($100,000) general compensatory damages and Fifty Thousand Dollars ($50,000) punitive damages;

11. As to Count Eleven, Twenty-five Thousand Dollars ($25,000) general compensatory damages and Twelve Thousand Five

Hundred Dollars ($12,500) punitive damages;

12. As to Count Twelve, Twenty-five Thousand Dollars ($25,000) general compensatory damages and Twelve Thousand Five Hundred Dollars ($12,500) punitive damages;

13. As to Count Thirteen, Two Hundred Fifty Thousand Dollars ($250,000) general compensatory damages and One Hundred Thousand Dollars ($100,000) punitive damages;

14. As to Count Fourteen, One Hundred Thousand Dollars ($100,000) general compensatory damages and Fifty Thousand Dollars ($50,000) punitive damages.

15. As to Count Fifteen, by reason of the losses suffered by Plaintiffs, the Plaintiffs herein request equitable relief from any further obligation or obligations to the Defendant and an order enjoining the Defendant from interferring with the business of the Plaintiffs. An injunction should be ordered preventing the Defendant and his agents, employees and/or business associates from committing any further wrongful acts.

16. Plaintiffs hereby request that they have such other and further relief as may be just and proper, with costs and disbursements of this action, including the fair and reasonable allowanc for counsel fees and other lawful expenses in connection with the prosecution of this action.

DATED this the 23rd day of June, 1975.

HATCH & PLUMB

By _____
Orrin G. Hatch
Attorney for Plaintiffs

POWER-TRAIN, INC.

By _____

_____
JACK H. WYNN

HILL, JANSSEN, CORBETT & ROBERTS
Attorneys at Law
730 Fifth Street
Post Office Box 106
Eureka, California 95501
Telephone (707) 442-2927

Attorneys for Defendants
POWER-TRAIN, INC., and
JACK H. WYNN

Exhibit F

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF HUMBOLDT

PAUL M. STUVER,

Plaintiff,

v.

JACK H. WYNN; POWER-TRAIN, INC., a corporation, et al.,

Defendants.

No. 56571

SUPPORTING DECLARATION OF DONALD B. ROBERTS

I, DONALD B. ROBERTS, Esquire, make the following declaration under penalty of perjury:

That I am the attorney for defendants herein. That I was referred the defense of defendants by attorney Orrin G. Hatch, 420 Continental Bank Building, Salt Lake City, Utah. That at the time of said referral, Attorney Hatch advised me that he contemplated filing legal proceedings against the plaintiffs in the State of Utah. That Hatch advised that because of the Utah filing he felt that Cross-complaint should not be filed at the time the Answer was filed in the instant action. That thereafter, Mr. Hatch

did file a Complaint against the plaintiffs in the within action in the District Court of the Third Judicial District in and for Salt Lake County, State of Utah, File No. 228733. That subsequently, motion was made by the attorneys for Paul M. Stuver in the said Utah action to dismiss the Utah Complaint on the theor that the compulsory cross-complaint statutes of both states required that the said Complaint against said Paul Stuver be filed in the within action. That on September 17, 1975, the Honorable Bryand H. Croft, Judge of the Third Judicial District Court, Salt Lake County, did enter his Minute Order dismissing the Utah action. That your declarant was advised of said decision on September 29, 1975. That thereafter, after due consultations with my client and with attorney Hatch, would determine that your declarant should file the accompanying motion for leave to file cross-complaint herein. That attorney Hatch has filed a Notice of Appeal of the dismissal of the Utah action.

That the accompanying proposed cross-complaint filed herewith, while different in form, is substantially similar to the action filed in Utah. That Paul Stuver and his attorneys have been aware of the claims made by defendants against said Paul Stuver. That no prejudice will result to the plaintiff herein from allowing leave to file the Cross-complaint herein and try the matter on the merits in California in the event that appeal from the Utah decision is unsuccessful.

Executed under penalty of perjury on November 12, 1975.

DONALD B. ROBERTS

Donald B. Roberts, Esquire

HILL, JANSSEN, CORBETT & ROBERTS
Attorneys at Law
730 Fifth Street
Post Office Box 106
Eureka, California 95501
Telephone (707) 442-2927

Attorneys for Cross-complainants

"Exh. 6"

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF HUMBOLDT

POWER-TRAIN, INC. and
JACK H. WYNN,

Cross-complainants,

v.

PAUL M. STUVER and DOES I through X,

Cross-defendants.

No. 56571

CROSS-COMPLAINT

Comes now cross-complainant and for cause of action alleges:

FIRST CAUSE OF ACTION

I

That cross-complainant, POWER-TRAIN, INC., is a Nevada Corporation duly qualified to do and doing business within the State of California.

II

That DOES I through X are fictitous cross-defendants named herein by virtue of the fact that cross-complainant does

not know the true names of said cross-defendants, and cross-complainants pray leave to amend their Cross-complaint to set forth the true names of said cross-defendants if and when the same are ascertained.

III

That cross-defendant, PAUL M. STUVER, is a resident of the County of Humboldt, State of California.

IV

That on October 20, 1973, cross-defendant, Paul M. Stuver entered into an "Assignment of Letters Patent," a copy of which is attached hereto and incorporated herein by reference as Exhibit A, wherein said cross-defendant represented that he was the sole and exclusive owner of Letters Patent No. 3,090,363 in the United States Patent Office pertaining to the "Mini-Sam Motor also known as "Power-Train," and wherein he did assign said Letters Patent to cross-complainant Jack H. Wynn.

V

That thereafter cross-complainant, Jack H. Wynn, as licensed owner of said Letters Patent, did grant to cross-complainant Power-Train, Inc. the exclusive right to manufacture, sell, and market said invention. A copy of said exclusive patent license agreement between cross-complainant is attached hereto and incorporated herein by this reference as Exhibit C.

VI

That on February 20, 1974, cross-defendant did execute an "Assignment of Rights, including Patent Rights," conveying all his rights including, but not limited to the patent rights to

a ". . .high volume, moderate pressure, radial piston, hydraulic pump and braking system. . ." hereinafter referred to as "pump," to Jack H. Wynn. A copy of said agreement is attached hereto and incorporated herein by this reference as Exhibit B.

VII

On February 21, 1974, cross-complainant, Jack H. Wynn, granted an Exclusive Patent License to cross-complainant, Power-Train, Inc., who among other things, manufactures, uses, sells, and markets the said pump. A copy of said Exclusive Patent License agreement is attached hereto and incorporated herein by this reference as Exhibit D.

VIII

That at all times herein mentioned, cross-complainant, Jack H. Wynn, was the President of Power-Train, Inc.

IX

That at all times herein mentioned, cross-defendant knew that Jack H. Wynn was President of Power-Train, Inc., and that ultimate assignment of Exhibits A and B would be made by said Jack H. Wynn to Power-Train, Inc.

X

That during the negotiations, before and after the execution of the various agreements attached hereto as Exhibits A through D, cross-defendant did falsely and fraudulently and with the intent to induce Jack H. Wynn and Power-Train, Inc., to enter into said agreement, did represent and warrant to Wynn and Power-Train as follows:

(a) That the Mini-Sam patents were good, viable, legally

unassailable, solid and that they would stand up under close scrutiny;

(b) That the Mini-Sam motor was a perfected device which was capable of immediate manufacture and dissemination;

(c) That the Mini-Sam motor was professionally and properly designed with the best engineering talents available;

(d) That the defendant, Stuver, was the sole inventor of both the Mini-Sam motor and the pump devices and had all right, title and interest in and to any patent rights thereto;

(e) That the defendant, Stuver, had applied said Mini-Sam motor to various automotive devices which worked and functioned perfectly;

(f) That said Mini-Sam motor was capable of driving an ordinary automotive vehicle and brake the speed in excess of eighty (80) miles per hour;

(g) That all of those who assisted him were paid in full and that the appropriate releases were obtained;

(h) That the Mini-Sam would become an instantaneous success to Power-Train, Inc.;

(i) That it would not take more than Fifty Thousand Dollars ($50,000) to begin the manufacture of the Mini-Sam to the point where Power-Train would have a perfected, fully working prototype vehicle which would be fully operable on either a truck or automobile;

(j) That it would not take more than Fifty Thousand Dollars ($50,000) to begin the effective manufacture of the pump;

(k) That he owned all of the necessary equipment, molds

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patterns, and other basic items of manufacturing necessary to the manufacturing of the said Mini-Sam;

(l) That he had not conveyed any of his right, title, and interest in and to the Mini-Sam and/or the pump to others;

(m) That he would lend his best efforts in cooperating with the plaintiffs in the setting up of the manufacture, and marketing of the allegedly "perfected devices";

(n) That he would not cause disturbances or interfere with any of the employees or business contacts of the Plaintiffs; and

(o) That he would otherwise lend his best efforts to see the Power-Train projects through successfully;

(p) In entering into such agreements, Stuver misrepresented that he had all of the technical know-how necessary to begin the manufacture of the Mini-Sam, Power-Train motor, and pump. In fact, Stuver did not have such expertise, engineering or manufacturing know-how.

(q) The defendant continued to represent, throughout all of the negotiations, subsequent employment and subsequent losses of Power-Train, that the Mini-Sam and pump devices were economically viable and perfected products and were immediately capable of manufacturing into a single truck or automobile vehicle and then, after the worth of the single vehicle was demonstrated, the full manufacturing would be easily and inexpensively instituted.

XI

That said representations and each of them were false and that the cross-defendant knew said representations to be false at

the time he made them.

XII

That cross-complainants believe such representations to be true and relied upon said representations in entering into said agreements with cross-defendants and making payments pursua thereto.

XIII

That as an approximate result of these misrepresentation: cross-complainants have been damaged in a sum in excess of One Million Dollars ($1,000,000).

XIV

That the misrepresentations and actions of cross-defendar herein described were fraudulent, malicious, and oppresive, and as a result thereof, cross-complainants seek exemplary damages herein in the amount of One Million Dollars ($1,000,000).

WHEREFORE, cross-complainant pray judgment as hereinafter alleged.

SECOND CAUSE OF ACTION

I

Cross-complainants hereby adopt and restate the allegatio of Paragraphs I through IX of the First Cause of Action and by this reference incorporates them herein.

II

Cross-complainants have performed all the conditions, covenants, and promises under agreements A and C on their part to be performed.

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III

That after October 20, 1973, cross-defendant breached said agreements by entering into agreements with a third party concerning said inventions and patent(s) in violation of said contract, by interferring with the work being performed by cross complainant's employees on development of said inventions, by failing to cooperate, failing to use his best effort to develop and perfect the said inventions.

IV

As a result of said breaches of said agreements, cross-complainant has been damaged and delayed in the development of said inventions as well as other related business matters. It has been damaged in reputation within the industry all to cross-complainants damage in a sum in excess of Two Hundred Fifty Thousand Dollars ($250,000).

WHEREFORE, cross-complainants pray judgment as hereinafte alleged.

THIRD CAUSE OF ACTION

Cross-complainants hereby adopt and restate the allegatior of Paragraphs I through IX of the First Cause of Action and by this reference incorporate them herein.

II

From October 20, 1973, to date, cross-defendant, knowing the cross-complainant was engaged in the business of developing the intentions described in the agreements attached hereto, as well as other inventions, with the malicious intent and design of obstructing and interferring with the successful operation of

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cross-complainants business, willfully, knowingly, and malicious ly interferred with the operation of the cross-complainant's plant, attempted to convey rights in the inventions described in Exhibits A and C to third parties, intentionally contacted other with regard to said patents and inventions without the consent o notice to cross-complainants and has attempted to profit directl and indirectly from dealing with third parties with regard to said inventions and profits. (Cross-defendants have interferred with the relationship of cross-complainants with potential customers and investors) No

III

As a direct and proximate result of the wrongful conduct of defendant alleged in Paragraph II herein, cross-complainant has sustained damages from loss of business, damage to reputation and delay in the production and perfection of various products to cross-complainants' damage in the sum in excess of Five Hundred Thousand Dollars; by reason of the intentional, knowing, delibera and malicious conduct of defendant as alleged herein, plaintiff in addition seeks exemplary damages from defendant in the sum of Five Hundred Thousand Dollars ($500,000).

FOURTH CAUSE OF ACTION

I

Cross-complainant hereby adopts and restates the allega- tions of Paragraphs I through IX and XIV of the First Cause of Action and by this reference incorporates them herein.

II

Cross-defendants, on or after October 20, 1973, did

intentionally destroy and injure equipment and manufacturing devices of cross-complainant.

III

That as a direct and proximate result, said destruction of equipment and devices, cross-complainant has been damaged in the sum of One Hundred Thousand Dollars; that the said actions were malicious and oppresive as to cross-complainants.

Cross-complainants request exemplary damages in the sum of Fifty Thousand Dollars ($50,000).

WHEREFORE, cross-complainant prays judgmens as follows:

1. For damage on the First Cause of Action in the amount of One Million Dollars ($1,000,000);

2. For Punitive damages in the First Cause of Action in the amount of One Million Dollars ($1,000,000);

3. For damages on the Second Cause of Action according to proof in excess of Two Hundred Fifty Thousand Dollars ($250,00

4. For damages on the Third Cause of Action according to proof in excess of Five Hundred Thousand Dollars ($500,000);

5. For punitive damages on the Third Cause of Action in the amount of Five Hundred Thousand Dollars ($500,000);

6. For damages on the Fourth Cause of Action in the amount of One Hundred Thousand Dollars ($100,000);

7. For punitive damages on the Fourth Cause of Action in the amount of Fifty Thousand Dollars ($50,000);

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8. Costs of Suit;

9. Such other and further relief as the Court deems proper.

DATED: November ___, 1975.

HILL, JANSSEN, CORBETT & ROBERTS

By DONALD B. ROBERTS
Donald B. Roberts
Attorney for Cross-complainants

HILL, JANSSEN, CORBETT AND ROBERTS ATTORNEYS AT LAW LOS ANGELES, CALIFORNIA